

5. On July 31, 2020, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13304 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 30, 2020, for the applicant to respond. On August 26, 2020, the agent for the applicant requested the Department continue with the transfer, proceed with issuance of the Preliminary Determination, and provided information to demonstrate the applicant is qualified to pursue the transfer. Additionally, on October 7, 2020, the agent for the applicant requested additional time for completion of the transfer to be extended to October 1, 2025, to guarantee adequate time to complete the project. The Department approved and extended the date by which the applicant must make full beneficial use of water under the terms and conditions of this transfer to October 1, 2025.
6. On October 1, 2020, the Department approved an assignment of transfer application T-13304 to KW Ranch, LLC, still owned and operated by Mr. Guy Harvey. The assignment was recorded in the records of the Water Resources Department in Salem.
7. On January 19, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-13304 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on January 26, 2021, and in The Dalles Chronicle newspaper on January 27 and February 3, 2021, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

8. The first right to be transferred is as follows:

Certificate: 3317 in the name of TYGH VALLEY HIGH LINE DITCH CO., c/o C.A. Harth (perfected under Permit S-220)
Use: IRRIGATION of 341.0 ACRES
Priority Date: AUGUST 19, 1909
Rate: 4.26 CUBIC FEET PER SECOND, or its equivalent in case of rotation
Source: BADGER and TYGH CREEKS, a tributary of WHITE RIVER

Authorized Place of Use:

IRRIGATION						Acreage per Change	
Twp	Rng	Mer	Sec	Q - Q	Proposed Changes	▲ Addt'l POD	▲ POU
4 S	13 E	WM	1	SW NE	Addt'l POD only	14.0	--
4 S	13 E	WM	1	SW NW	Addt'l POD only	28.0	--
4 S	13 E	WM	1	SE NW	Addt'l POD only	26.0	--
4 S	13 E	WM	1	NW SW	Addt'l POD only	36.0	--
4 S	13 E	WM	1	SW SW	Addt'l POD only	9.0	--
4 S	13 E	WM	1	NE SE	Addt'l POD only	30.0	--
4 S	13 E	WM	1	NW SE	Addt'l POD only	30.0	--
4 S	13 E	WM	1	SW SE	Addt'l POD only	25.0	--
4 S	13 E	WM	1	SE SE	Addt'l POD only	25.0	--
4 S	13 E	WM	2	SW NE	APOD and POU	2.0	0.9
4 S	13 E	WM	2	SE NE	Addt'l POD only	10.0	--
4 S	13 E	WM	2	SE NW	APOD and POU	7.0	3.6
4 S	13 E	WM	2	NE SW	Addt'l POD only	33.0	--

IRRIGATION						Acreage per Change	
Twp	Rng	Mer	Sec	Q - Q	Proposed Changes	▲ Addt'l POD	▲ POU
4 S	13 E	WM	2	NE SE	Addt'l POD only	3.0	--
4 S	13 E	WM	2	NW SE	Addt'l POD only	3.0	--
4 S	14 E	WM	6	SW NW	Addt'l POD only	10.0	--
4 S	14 E	WM	6	NE SW	Addt'l POD only	15.0	--
4 S	14 E	WM	6	NW SW	Addt'l POD only	15.0	--
4 S	14 E	WM	6	SW SW	Addt'l POD only	5.0	--
4 S	14 E	WM	6	SE SW	Addt'l POD only	15.0	--
Total:						341.0	4.5

9. Certificate 3317 does not describe the location of the points of diversion, however, based on the Department's permit map and the current map prepared by the applicant's Certified Water Rights Examiner based on a recent field visit and subsequent survey indicates that two points of diversion on Badger Creek and Tygh Creek are located as follows:

Twp	Rng	Mer	Sec	Q - Q	Ditch
3 S	13 E	WM	32	SE SW	TYGH CREEK - 1185 FEET NORTH AND 1400 FEET EAST FROM THE SW CORNER OF SECTION 32
4 S	13 E	WM	6	NE NE	BADGER CREEK - 1020 FEET SOUTH AND 45 FEET WEST FROM THE NE CORNER OF SECTION 6

10. Transfer Application T-13304 proposes an additional point of diversion downstream approximately 5.0 miles on Tygh Creek and further downstream approximately 1.5 miles on White River to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 S	13 E	WM	12	NW NE	NEW POD - 1430 FEET NORTH AND 930 FEET EAST FROM THE CENTER OF SECTION 12

11. Transfer Application T-13304 also proposes to change the place of use of the above described 4.5 acres to the following locations:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	13 E	WM	2	SW NE	0.8
4 S	13 E	WM	2	NW SE	3.7
Total:					4.5

12. The portion of the second right to be transferred is as follows:

Certificate: 3733 in the name of GEORGE J. BURLINGAME (perfected under Permit S-4069)
Use: IRRIGATION of 8.0 ACRES
Priority Date: MAY 2, 1919
Rate: 0.10 CUBIC FOOT PER SECOND
Source: BADGER and TYGH CREEK, a tributary of WHITE RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	13 E	WM	3	NW NE	8.0

*Note: there exists a layered supplemental water right, being Permit G-17353, on these lands that will not be transferred and additionally will not be proved up on.

13. Certificate 3733 does not describe the location of the points of diversion, however, based on the Department's permit map and the current map prepared by the applicant's Certified Water Rights Examiner, and based on a recent field visit and subsequent survey indicates that two points of diversion on Badger Creek and Tygh Creek are located as follows:

Twp	Rng	Mer	Sec	Q - Q	Ditch
3 S	13 E	WM	32	SE SW	TYGH CREEK - 1185 FEET NORTH AND 1400 FEET EAST FROM THE SW CORNER OF SECTION 32
4 S	13 E	WM	6	NE NE	BADGER CREEK - 1020 FEET SOUTH AND 45 FEET WEST FROM THE NE CORNER OF SECTION 6

14. Transfer Application T-13304 proposes an additional point of diversion downstream approximately 5.0 miles on Tygh Creek and further downstream approximately 1.5 miles on White River to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 S	13 E	WM	12	NW NE	NEW POD - 1430 FEET NORTH AND 930 FEET EAST FROM THE CENTER OF SECTION 12

15. Transfer Application T-13304 proposes to change the place of use of the above right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	13 E	WM	2	SW NE	8.0

16. The portion of the third right to be transferred is as follows:

Certificate: 24525 in the name of TYGH VALLEY HIGHLINE DITCH COMPANY (perfected under Permit S-19086)

Use: IRRIGATION of 67.4 ACRES

Priority Date: OCTOBER 24, 1949

Rate: 1.30 CUBIC FEET PER SECOND, water to be diverted from Tygh Creek when available, any deficiency in the available supply from Tygh Creek to be made up by diversion from Badger Creek providing the total diversion does not exceed 1.30 cubic feet per second from both streams.

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the total diversion from both sources shall not exceed the quantity allowed herein.

Source: BADGER and TYGH CREEKS, a tributary of WHITE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Source
3 S	13 E	WM	32	SE SW	TYGH CREEK
4 S	13 E	WM	6	NE NE	BADGER CREEK

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	13 E	WM	1	NW NE	11.6
4 S	13 E	WM	1	SW NE	17.0
4 S	13 E	WM	1	NE NW	6.0
4 S	13 E	WM	1	SE NW	6.0
4 S	13 E	WM	1	NE SW	18.0
4 S	13 E	WM	1	SE SW	8.8
Total:					67.4

17. Transfer Application T-13304 proposes an additional point of diversion downstream approximately 5.0 miles on Tygh Creek and further downstream approximately 1.5 miles on White River to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 S	13 E	WM	12	NW NE	NEW POD - 1430 FEET NORTH AND 930 FEET EAST FROM THE CENTER OF SECTION 12

18. The fourth right to be transferred is as follows:

Certificate: 52578 in the name of RICK HARVEY (confirmed by decree of the Circuit Court of the State of Oregon for Wasco County River decree)

Use: IRRIGATION of 114.5 (Tract 1) and 77.5 ACRES (Tract 2)

Priority Date: 1877 for Tract 1 and 1866 for Tract 2

Limit/Duty: The amount of water to which such right is entitled, for the purpose of irrigation, is limited to an amount actually beneficially used for said purposes, and shall not exceed 3.0 acre-feet per acre during the irrigation season (with the further limitations contained in paragraph 24 of said decree); if available at the original point of diversion; NE $\frac{1}{4}$ SW $\frac{1}{4}$, Section 3, T4S, R13E, WM; 910 feet South and 1010 feet West from the Center of Section 3 (Bonney Ditch)

Source: TYGH CREEK, a tributary of WHITE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 S	13 E	WM	11	NW NE	TYGH CREEK - 20 FEET SOUTH AND 1940 FEET EAST FROM THE NW CORNER OF THE NE $\frac{1}{4}$ NW $\frac{1}{4}$ OF SECTION 11

Authorized Place of Use:

IRRIGATION – TRACT 1 (1877)					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	13 E	WM	1	SW SW	2.1
4 S	13 E	WM	2	NE SW	10.4
4 S	13 E	WM	2	SE SW	38.6
4 S	13 E	WM	2	NE SE	19.3
4 S	13 E	WM	2	NW SE	28.9

IRRIGATION – TRACT 1 (1877)					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	13 E	WM	2	SW SE	7.4
4 S	13 E	WM	2	SE SE	7.8
Total:					114.5

IRRIGATION – TRACT 2 (1866)					
Twp	Rng	Mer	Sec	Q - Q	Acres
4 S	13 E	WM	1	SW SW	17.3
4 S	13 E	WM	2	SW SE	32.2
4 S	13 E	WM	2	SE SE	28.0
Total:					77.5

19. Transfer Application T-13304 proposes an additional point of diversion for the above described right downstream approximately 5.0 miles on Tygh Creek and further downstream approximately 1.5 miles on White River to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 S	13 E	WM	12	NW NE	NEW POD - 1430 FEET NORTH AND 930 FEET EAST FROM THE CENTER OF SECTION 12

20. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

21. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
22. Diversion structures and ditches sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-13304.
23. The proposed changes would not result in enlargement of the rights.
24. The proposed changes would not result in injury to other water rights.
25. All other application requirements are met.

Conclusions of Law

The changes in place of use and additional points of diversion proposed in Transfer Application T-13304 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

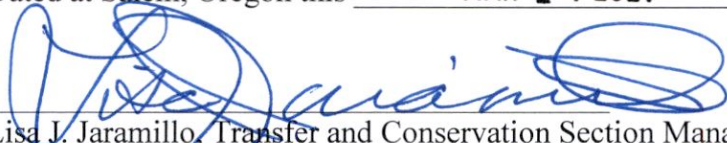
Now, therefore, it is ORDERED:

1. The changes in place of use and additional points of diversion proposed in Transfer Application T-13304 are approved.
2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 3317, 3733, 24525 and 52578 and any related decree.
3. Water right Certificates 3317, 3733, 24525 and 52578 are cancelled. New certificates will be issued describing those portions of Certificates 3733, 24525, and 52578 not affected by this transfer.
4. The combined quantity of water, as authorized under Certificates 3317, 3733, and 24525, diverted at the new additional point of diversion (New POD), together with that diverted at the original points of diversion (Badger and Tygh Creeks), shall not exceed the quantity of water lawfully available at the original points of diversion (Badger and Tygh Creeks).
5. The quantity of water, as authorized under Certificate 52578, diverted at the new additional point of diversion (New POD), shall not exceed the quantity of water lawfully available at the original point of diversion (Tygh Creek).
6. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each new point of diversion.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
7. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
8. The former places of use of the transferred rights (Certificates 3317 and 3733) shall no longer receive water under the rights.

9. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
10. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this **MAR 24 2021** ,



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

Mailing date: **MAR 25 2021**